

State of Alaska FY2008 Governor's Operating Budget

Department of Law Human Services and Child Protection Component Budget Summary

Component: Human Services and Child Protection

Contribution to Department's Mission

Child Protection Section

The Child Protection section was established in July 2005, consisting of all of the child protection attorneys in the former Human Services section. This new section was created due to the large number of attorneys who handle child protection cases. The Child Protection section provides advice and representation to the Department of Health and Social Services, Office of Children's Services, to assist that agency in the performance of its functions.

Human Services Section

The Human Services section provides advice and representation to the Department of Health and Social Services (DHSS) to assist that agency in the performance of its functions.

Core Services

Child Protection Section

Attorneys in the Child Protection section provide legal assistance to the Department of Health and Social Services, Office of Children's Services (OCS) on issues arising from the state's child protection system. Attorneys advise social workers at OCS prior to the initiation of legal action and, if necessary, they initiate legal action to remove children from abusive or neglectful homes. These attorneys litigate whether children should be in the legal custody of the state and, if so, whether they should be removed from the home of their parents. These attorneys also assist OCS social workers to implement a plan to safely return children home or take legal action to terminate parental rights to allow permanent placement in adoptive homes of children in state custody.

Human Services Section

Attorneys in the Human Services section provide legal assistance to the Department of Health and Social Services on issues arising from the state's health services, social services, and welfare programs. They advise divisions and offices of the department regarding changes in federal law and steps necessary at the state level to remain in compliance with federal funding requirements. Attorneys in the Human Services section prosecute foster care, assisted living, and adult foster home licensing revocations; establish senior guardianships and conservatorships; represent the state's psychiatric facility and designated treatment and evaluation centers in mental commitments; represent the state in Medicaid recipient/provider hearings and appeals and other Medicaid issues; provide advice on public health and public assistance issues; provide advice related to the certificate of need program; draft, review and consult with the Department on all regulations promulgated by the Department prior to adoption, and provide advice to the Long Term Care Ombudsman.

FY2008 Resources Allocated to Achieve Results

FY2008 Component Budget: \$6,708,900	Personnel:	
	Full time	59
	Part time	2
	Total	61

Key Component Challenges

Child Protection Section

Statutory changes at the state and federal level have necessitated changes in how long children may remain in the child protection legal system. These changes move cases to conclusion faster to ensure that when reunification with the family is not in the child's best interest the child can be made legally eligible for placement in a permanent home more

quickly. The changes also mandate additional court proceedings in order to ensure that the department is quickly moving to achieve a permanent plan for the child. The accelerated schedules, additional hearings, and appropriate document preparation mean that each attorney has a significant caseload. Maintaining our existing resources for child protection is necessary in order for us to effectively manage this important responsibility. Adequate attorney resources are also necessary in order to help the Office of Children's Services meet certain goals for purposes of federal funding of foster care and administrative expenses involved in child protection. We anticipate with additional positions created in FY2005 and FY2006, we should be able to help the Office of Children's Services to maximize federal reimbursement.

The section is representing the Office of Children's Services in a lawsuit filed by four Alaska Native villages alleging violations of the Indian Child Welfare Act, the Adoption and Safe Families Act, and the Multi-Ethnic Placement Act. Plaintiffs have requested the establishment of an oversight body to monitor the activities of the Office of Children's Services. Although there is currently a stay in this proceeding due to interlocutory appellate review, we anticipate large amounts of time will need to be devoted to this case in the event the state does not prevail on appeal. We expect to know sometime during FY2007 whether we will prevail on appeal or will need to once again devote one position to defending this lawsuit.

The section is also representing OCS in two lawsuits filed challenging the state's position that tribes do not have the authority to initiate child protection cases. One case is filed in state court and the other is filed in federal court. Briefing has been completed before the superior court in the state court case. It is expected defending these lawsuits will take significant time.

In the FY2005 budget, the governor requested and the legislature authorized an increment \$508,600 for the addition of three attorney positions and a paralegal. In FY2006, as a result of a fiscal note attached to HB 53, the Family Rights Act, the department obtained \$586,400 in order to deal with new requirements imposed as a result of that Act. In FY2007, as a result of a fiscal note attached to a bill that increased the number of judges in Palmer, the department obtained funding to pay for an additional position in Palmer. The addition of these funds enabled the department to create new attorney positions in Kenai, Palmer and Anchorage, and to create new paralegal positions in Fairbanks and Anchorage. The department also created a position in Nome to handle Nome and Kotzebue cases. In the past, child protection cases in Kenai, Palmer, Nome, and Kotzebue were handled out of Anchorage, requiring attorneys to travel often. These communities are very pleased to have local attorneys handling their child protection cases.

In this budget request, the Child Protection Section seeks to add two paralegals, one each in Palmer and Kenai. Presently, in each of those locations, one attorney is handling the entire child protection caseload, and in both instances the caseload is far about the recommended 100 cases per attorney, with 160 in Palmer and 196 in Kenai. The Palmer office will soon add a second attorney as a result of the passage of the bill in the last legislative session that adds new judges around the state, including two in Palmer and one in Kenai. This means that cases will be moving through the judicial system much more quickly. Attorneys doing child protection work in both locations will greatly benefit from paralegal support. Paralegals are generally responsible for obtaining often voluminous case files for the Office of Children's Services, purging those files of confidential information, and providing copies as discovery to the other parties to the case; reviewing OCS files to prepare exhibit lists and motions for records; arranging for subpoenas for witnesses; preparing pre-trial notebooks; contacting and interviewing witnesses; scheduling witnesses for trial; preparing routine motions and responses to motions; and trial support. Without paralegal support, these tasks fall to the attorneys and detract from preparation for court. Two additional paralegals, one each for Kenai and Palmer, are requested herein, for a total general fund amount of \$250,800. The department plans to add an additional half-time law office assistant in Kenai with existing funds.

Human Services Section

Attorneys who handle cases and issues relating to Medicaid have had a large increase in work due to changes in the regulations related to Medicaid waivers. Additionally, provider appeals have increased, which requires additional audits of Medicaid providers. This increase has resulted in both administrative appeals and appeals to the superior court. This section has assumed responsibility over the legal work associated with Medicaid Liens and subrogation, which has resulted in close to 400 new open litigation files. Additionally, changes to the licensing structure in the Department as a result of SB 125 has resulted in work load increases as the department implements regulations in support of this bill. Finally, the implementation of the new public health law has resulted in an increase in the agency advice to the Division of Public Health.

Significant Changes in Results to be Delivered in FY2008

Child Protection Section

In FY2005, FY2006 and FY2007, the Child Protection section obtained additional attorney and paralegal positions to handle child protection cases statewide. With the addition of these positions, we have been able to reduce caseloads to a more manageable 125 cases per full-time attorney. Most importantly, Alaskan children will benefit from moving to permanent home placements sooner because the legal work necessary in order to make them available for adoption will be completed more quickly. The reduction of cases will enhance our section's ability to increase compliance with federal requirements, thus increasing federal reimbursement to the Department of Health and Social Services which in turn helps to fund child-in-need-of-aid (CINA) attorneys; and recruitment and retention of attorneys for CINA positions will improve as caseload pressure on existing staff is relieved.

Human Services Section

Passage of two major bills (SB 125 regarding licensing and HB 95 regarding public health disasters and emergencies) will require increased agency advice, and possibly litigation, as the Department implements these bills. In addition, the first complete round of Medicaid audits as result of the passage of SB 41 in 2004, have been completed. Each of the audits has a process attached to it that allows for administrative and legal review of findings. Finally, the Department of Health and Social Services has implemented a Quality Assurance program to work on program compliance, which will result in increased agency advice.

Major Component Accomplishments in 2006

Child Protection Section

Continued to prosecute approximately two thousand ongoing child-in-need-of-aid (CINA) cases statewide, moving toward the goal of achieving permanency for children, whether it be reunification with their parents or other permanent placements, such as adoption or guardianship.

Continued to assist the attorneys in Opinions, Appeals, and Ethics section in appellate cases stemming from CINA cases. This function was transferred to the OAE section to achieve consistency in the quality of briefing at the appellate level, but trial attorneys continue to advise and assist the appellate attorneys. An additional attorney position was created in FY2005 to deal with the increasing appellate caseload. Achieved several major victories in the Alaska Supreme Court that resulted in affirming orders terminating parental rights so the children involved may achieve a permanent placement. Between July 1, 2005 and June 30, 2006, 16 appeals or petitions for review were filed requesting supreme court review of trial court rulings in child protection matters. Of the 16 appeals or petitions filed, all were filed by parents; none was filed by the state. During the fiscal year three of these appeals were settled or were dismissed at the request of the appellant, one appeal resulted in a published opinion; one appeal resulted in an unpublished decision; and one petition for review was denied. In addition, during this time period 10 appeals that were pending before July 1, 2005 were resolved: two of these appeals were settled or were dismissed at the request of the appellant; four appeals resulted in published opinions; and four appeals resulted in unpublished decisions. All five of the published opinions issued during this time period were decided in the state's favor. Of the unpublished decisions, four favored the state and one was decided in the appellant's favor. As of June 30, 2006, 11 appeals from superior court child-protection orders are pending in the state supreme court. All of the pending appeals were filed by parents.

Provided legal advice and assistance to DHSS concerning HB 53 and HB 408 bills reforming Alaska's child protection statutes.

Assisted in the drafting and adoption of confidentiality regulations eventually adopted by DHSS in FY2007. Prepared a Frequently Asked Questions (FAQ) document pertaining to confidentiality.

Continued to revise forms and institute new practices to comply with amendments to the children's code caused by the Adoption and Safe Families Act. Created standard forms designed to be filled out and signed in court in order to more quickly get necessary court orders to OCS.

Continued to work with the Child Support Enforcement Division in the Department of Revenue toward the goal of early establishment of paternity in child protection cases and consistently obtaining child support orders from parents whose children are in state custody.

Provided regular training sessions at the social worker academy on the child protection legal system.

Continued to advise the department on how to respond to public records requests.

Advised OCS personnel on how to respond to media requests.

Represented DHSS, OCS, in a lawsuit filed by four Alaska Native villages alleging violations of the Indian Child Welfare Act, the Multi-Ethnic Placement Act, and the Adoption and Safe Families Act. This case is now before the Alaska Supreme Court on an interlocutory appeal.

Represented DHSS, OCS in a lawsuit filed by four other Alaska Native villages challenging the advice given to OCS in a 2004 Attorney General's Opinion regarding tribal jurisdiction over child protection cases.

Represented DHSS, OCS in a lawsuit filed in federal court by the Native Village of Kaltag and two individuals. The main issue raised by the case is whether tribal courts of Alaska Native villages without reservations have the legal authority to initial child protection cases that can lead to the termination of parental rights and to issue adoption orders entitled to be given full faith and credit by the state.

Worked with DHSS, OCS, to establish procedures to ensure timely compliance with requirements of Title IV-E of the Social Security Act, to attempt to increase reimbursement for foster care and administrative expenses.

Continued to participate in a pilot project for the Family CARE (Community Assisted Recovery Efforts) Court began in August of 2002. The project encompasses the coordinated efforts of the Department of Law, Department of Administration's Office of Public Advocacy (OPA) and Public Defender, and the Court System. The pilot uses principles from the drug court model to directly engage and assist parents of children who have been the subject of CINA petitions.

Participated in the Children's Justice Act Task Force, the Court Improvement Project, the CINA Rules Committee, a statewide Indian Child Welfare Act (ICWA) Committee, and several other groups and committees formed for the purpose of improving the child protection field.

Responded to inquiries as a result of an Attorney General opinion advising the Office of Children's Services about the impact an Alaska Supreme Court Case (C.R.H.) has on the ability of Alaska Native tribal courts to take jurisdiction over child protection proceedings and the duty of OCS to investigate reports of harm on Alaska Native children.

Human Services Section

Engaged in foster care and assisted living licensing revocation actions, including successfully prosecuting three contested hearings.

Advised the Department of Health and Social Services on matters related to compliance with federal law affecting confidential patient records, and legal matters regarding the reporting and control of diseases of public health significance.

Provided on-going advice to the Division of Public Assistance and the Medical Examiner's Office.

Provided on-going advice and representation to the Division of Medical Assistance, Division of Mental Health and Developmental Disabilities and the Division of Senior Services (now the Divisions of Health Care Services, Senior and Disabilities Services, and Behavioral Health) related to the administration of the home and community based waiver programs. Such advice and representation includes representing the agency during fair hearings, superior court appeals, and supreme court appeals.

Provided advice on the administration of home and community based waiver programs. Advised the agency with respect to fair hearings sought by recipients, whose benefits were denied, reduced or terminated, participated in such hearings and handled appellate review.

Provided advice and legal representation on Medicaid lien and subrogation issues, including intervening in civil actions, seeking recovery of liens and working on and developing legislation and regulations to implement this program.

Provided advice to the Division of Health Care Services with respect to provider appeals and participated in administrative hearings and superior court appellate review. The Medicaid attorneys also provide advice to the commissioner's office on a wide range of issues including Medicaid Rate issues, tribal health issues, regulation and legislation development and advising on programs related to increasing the amount of federal financial participation (FFP). The Medicaid attorneys also provide advice and input in working with outside counsel on Center of Medicare and Medicaid disallowance. Finally,

the Medicaid attorneys are involved in advising the Department on various policy initiatives, which may or many not include the development of legislative and regulatory changes to affect those policy goals.

Provided on-going advice to the Division of Mental Health and Developmental Disabilities (now Division of Behavioral Health) related to the implementation of the involuntary mental commitment statutes (AS 47.30 et. seq.), including representing the state in mental commitment hearings, and advising the division on issues related to mental commitments.

Continued to handle a large number of guardianship and conservator cases for vulnerable adults throughout the state.

Provide on-going advice to the Pioneer Homes, including litigation in state superior court, administrative hearings and the Office of Civil Rights, related to complaints a single individual related to her father who resides in one of the homes.

Provide dedicated legal support to the Department related to the adoption of all regulations proposed by the Department.

In FY2006, the component was split into two sections: Child Protection and Human Services. The Child Protection section is headed by Dianne Olsen, Stacie Kraly heads Human Services.

Statutory and Regulatory Authority

AS 44.23.020

Contact Information
<p>Contact: Dianne Olsen, Chief Assistant Attorney General Phone: (907) 269-5100 Fax: (907) 258-6872 E-mail: Dianne_Olsen@law.state.ak.us</p>

Human Services and Child Protection Component Financial Summary

All dollars shown in thousands

	FY2006 Actuals	FY2007 Management Plan	FY2008 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	4,832.2	4,957.1	5,880.1
72000 Travel	92.4	37.5	38.7
73000 Services	688.1	642.7	661.9
74000 Commodities	93.0	80.3	83.9
75000 Capital Outlay	42.9	35.6	44.3
77000 Grants, Benefits	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	5,748.6	5,753.2	6,708.9
Funding Sources:			
1004 General Fund Receipts	4,244.3	4,244.0	5,187.5
1007 Inter-Agency Receipts	1,431.1	1,432.3	1,434.0
1037 General Fund / Mental Health	73.2	76.9	87.4
Funding Totals	5,748.6	5,753.2	6,708.9

Estimated Revenue Collections

Description	Master Revenue Account	FY2006 Actuals	FY2007 Manageme nt Plan	FY2008 Governor
<u>Unrestricted Revenues</u>				
None.		0.0	0.0	0.0
Unrestricted Total		0.0	0.0	0.0
<u>Restricted Revenues</u>				
Interagency Receipts	51015	1,431.1	1,432.3	1,434.0
General Fund Mental Health	68520	73.2	76.9	87.4
Restricted Total		1,504.3	1,509.2	1,521.4
Total Estimated Revenues		1,504.3	1,509.2	1,521.4

**Summary of Component Budget Changes
From FY2007 Management Plan to FY2008 Governor**

All dollars shown in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2007 Management Plan	4,320.9	0.0	1,432.3	5,753.2
Adjustments which will continue current level of service:				
-Additional Superior Court Judges CH 51 SLA 2006 (SB237)	-6.5	0.0	0.0	-6.5
-FY 08 Health Insurance Increases for Exempt Employees	4.1	0.0	1.7	5.8
-Fund Source Adjustment for Retirement Systems Increases	201.5	0.0	-201.5	0.0
Proposed budget increases:				
-Two New Paralegals and Law Office Assistant - Child Protection	250.8	0.0	0.0	250.8
-FY 08 Retirement Systems Rate Increases	504.1	0.0	201.5	705.6
FY2008 Governor	5,274.9	0.0	1,434.0	6,708.9

Human Services and Child Protection Personal Services Information

Authorized Positions			Personal Services Costs	
	<u>FY2007</u> <u>Management</u> <u>Plan</u>	<u>FY2008</u> <u>Governor</u>		
Full-time	57	59	Annual Salaries	3,590,511
Part-time	1	2	Premium Pay	3,386
Nonpermanent	0	0	Annual Benefits	2,574,555
			<i>Less 4.76% Vacancy Factor</i>	(293,343)
			Lump Sum Premium Pay	0
Totals	58	61	Total Personal Services	5,875,109

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Administrative Clerk II	2	0	0	0	2
Assoc Attorney II	1	0	0	0	1
Attorney III	6	0	1	2	9
Attorney IV	7	3	4	3	17
Attorney V	1	1	2	0	4
Attorney VI	1	0	1	0	2
Law Office Assistant I	7	2	3	1	13
Law Office Assistant II	1	1	1	1	4
Paralegal Asst II	1	0	0	0	1
Paralegal II	4	1	1	2	8
Totals	31	8	13	9	61